

EXHIBIT A

Rappaport Deposition

Vol. I, II

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1 VOLUME I
2 PAGES 1-159
3 EXHIBITS 52-61
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF MASSACHUSETTS
6 C.A. No. 04-11193NG

7 *****

8 SHAWN DRUMGOLD,

9 Plaintiff

10 vs.

11 TIMOTHY CALLAHAN,

12 FRANCIS M. ROACHE,

13 PAUL MURPHY, RICHARD WALSH,

14 AND THE CITY OF BOSTON,

15 Defendants

16 *****

17 DEPOSITION OF STEVEN RAPPAPORT, a

18 witness called by counsel for the Defendant,

19 Richard Walsh, taken pursuant to the applicable

20 provisions of the Federal Rules of Civil

21 Procedure, before Joann Denning, a Shorthand

22 Reporter and Notary Public in and for the

23 Commonwealth of Massachusetts, at the offices

24 of Bonner Kiernan Trebach & Crociata, One

Liberty Square, Boston, Massachusetts, on

Friday, August 4, 2006, commencing at 10 a.m.

00028

1 those motions and prepare him for any
2 particular hearing in Roxbury District Court
3 outside of your initial intake?

4 A. Well, I know I would have met with him. I
5 don't think that I would have had to have
6 prepared him to testify at any hearing, as I
7 think back. I don't have a memory of it, but
8 there would have been no reason for
9 Mr. Drumgold to testify at any such hearing.

10 Q. As a seasoned criminal defense attorney at the
11 time, you didn't want to put your client on the
12 stand to testify without you knowing all the
13 facts in the case?

14 MS. SCAPICCHIO: Objection.

15 A. No. That certainly is part of the thought
16 process, but if there's no need to put your
17 client on the stand generally you don't put
18 your client on the stand. In this case I
19 didn't think that there was any need to put my
20 client on the stand based upon the fact that my
21 best witness as to what had transpired was the
22 judge, who I trusted.

23 Q. After the initial intake of Shawn Drumgold,
24 when you met with him on the subsequent

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1 occasions would you take notes of any

2 interviews?

3 A. Probably.

4 Q. What would you do to secure and retain those

5 notes?

6 A. The notes were on yellow pads like we all have

7 in this room right now. And I maintained the

8 file. The yellow pads would have been kept in

9 the file.

10 Q. At any point in time, did you yourself transfer

11 the notes into a computer file --

12 A. No.

13 Q. -- by scanning or inputting?

14 A. No.

15 Q. Did you have anyone do it on your behalf?

16 A. No.

17 Q. Relative to the Shawn Drumgold case, who did

18 you have working with you during the course of

19 your investigation up through trial until you

20 filed a withdrawal?

21 A. I had an associate, Roseanne Ciardiello, and I

22 have a memory of making use of an investigator.

23 The investigator's name was Jay Groob, but he

24 had an agency, and he assured me that he had

00044

1 Q. When you received that information, would you

2 **take notes during the course of your review --**

3 A. Yes.

4 Q. -- in regards to a task list and what

5 information you needed to follow up on?

6 A. I tended to take notes on all the discovery

7 that I received.

8 Q. Would you retain those notes?

9 A. Certainly through trial.

10 Q. Did you in this case?

11 A. I don't have them anymore.

12 Q. The question is, did you retain them through

13 trial on this case?

14 A. I have to believe I retained them through

15 trial.

16 Q. Do you have any memory of who the attorney was

17 that replaced you in representing Shawn

18 Drumgold on appeal?

19 A. I think it was Ms. Scapicchio.

20 Q. At that point in time, did she request a

21 complete copy of your file?

22 A. I'm sure she did.

23 Q. Did you provide her a copy of everything that

24 was contained in your file relative to your

00045

1 representation of Shawn Drumgold?

2 A. My best memory is I did.

3 Q. Fair to say there's no reason why you would

4 have kept the notes out?

5 MS. SCAPICCHIO: Objection.

6 A. There would have been no reason for me to do

7 that.

8 Q. Do you have a memory that you did not keep the

9 notes out?

10 A. No.

11 Q. You have no memory one way or the other?

12 A. I thought I turned over my files. Actually not

13 just copies, I thought I turned over the files.

14 I knew it by the time -- I won't get into it.

15 I was rooting very hard for Ms. Scapicchio in

16 this case.

17 Q. I understand that. When you received notice of

18 Ms. Scapicchio's representation of Shawn

19 Drumgold on the appeal, you obviously wanted to

20 do everything that you could do to help Shawn

21 Drumgold and assist Ms. Scapicchio, correct?

22 A. I think that's fair.

23 Q. As a seasoned criminal defense attorney, you

24 know how important, one, your notes were?

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1 A. For purposes of appeal? I don't know if that's

2 it. My sense is that I'd want the attorney to

3 have everything that might help her.

4 Q. Which were your notes?

5 MS. SCAPICCHIO: Objection.

6 A. I just don't remember.

7 Q. You made sure that she had a copy of all the

8 discovery?

9 MS. SCAPICCHIO: Objection.

10 A. I would imagine I did.

11 Q. During the course of the pretrial phase, you

12 had your investigator conduct certain tasks,

13 whether they be interviews, obtaining

14 intelligence, criminal records, a variety of

15 things, is that correct?

16 A. I know that I would have hoped that that's what

17 my investigator would do.

18 Q. Do you have a memory of what you instructed

19 your investigator to do in this matter?

20 A. No.

21 Q. What was your standard operating procedure in

22 murder cases regarding the use of investigators

23 and what you would have them do?

24 MS. SCAPICCHIO: Objection.

00048

1 MS. SCAPICCHIO: Objection.

2 A. He most likely did, and I remember the form of
3 his reports, AI, whatever, American
4 Investigative, AIS, would say on it, but I
5 don't have any of those reports.

6 Q. I'll represent to you that Mr. Groob has
7 testified initially -- he has to come back --
8 that he generated reports during the course of
9 his work and bills and submitted a copy of
10 those reports to you. Would you acknowledge
11 that that is accurate?

12 A. I would acknowledge that he submitted reports
13 and bills to me.

14 Q. As a result of your continued assistance for
15 Shawn Drumgold and Ms. Scapicchio, you would
16 have turned over those reports of Investigator
17 Jay Groob to Ms. Scapicchio for the purposes of
18 appeal?

19 MS. SCAPICCHIO: Objection.

20 A. I can't imagine any reason why I wouldn't. I
21 don't have any memory of specifically what I
22 turned over to Ms. Scapicchio, but I thought I
23 had turned over what I had.

24 Q. You would acknowledge that there's no privilege

00049

1 that attaches to the reports that would prevent
2 you from turning them over to Shawn Drumgold
3 and his attorneys for the purposes of the
4 appeal?

5 A. This was as far as I was concerned Shawn
6 Drumgold's property.

7 Q. Including your notes?

8 MS. SCAPICCHIO: Objection.

9 A. In this case, probably yes. In some cases I
10 would say no, that all my notes are not the
11 property of the client. But in this case I
12 would have had the attitude or the -- well, it
13 would have been my position that whatever I had
14 was his.

15 Q. Since the entering of an appearance by
16 Ms. Scapicchio on behalf of Shawn Drumgold, you
17 continued to cooperate and assist Shawn
18 Drumgold in his appeal?

19 MS. SCAPICCHIO: Objection.

20 A. I know that if Ms. Scapicchio ever called
21 requesting my view of something, I was more
22 than happy to assist Ms. Scapicchio. I don't
23 know that I had very many discussions other
24 than in passing with Shawn Drumgold after

00050

1 Ms. Scapicchio took over the representation. I
2 remember seeing him in court, I guess, during
3 the first hearing on motion for new trial,
4 seeing him in court during the second hearing
5 on motion for new trial.

6 Q. Did you visit him between the time of his --

7 A. I don't know if I visited him after I no longer
8 represented him.

9 Q. You just have to wait until I finish the
10 question.

11 A. I'm sorry.

12 Q. But you answered it. After you withdrew and
13 Ms. Scapicchio entered an appearance, did you
14 visit him or have any contact with him?

15 A. Well, there's two different questions. I don't
16 know that I ever visited him. I may have had
17 contact with him. Prisons being what they are,
18 I might be in a prison visiting somebody else
19 and Shawn Drumgold would be in the visiting
20 room.

21 Any conversations that Shawn and I would
22 have had after my representation concluded were
23 more sort of social pep talk, social like hi,
24 how are you, I know Rose is breaking her ass

00148

1 Q. Based on the time of your willingness to
2 cooperate in Shawn Drumgold seeking a new
3 trial, you read this, believed it to be
4 accurate, and executed it?

5 A. That's correct.

6 Q. Subsequent to that you were produced and
7 provided transcripts and correspondence that
8 determined that you, in fact, had in your
9 possession Olisa Graham's statement?

10 A. My memory is that prior to the beginning of the
11 actual hearing Mr. Meier was a gentleman and
12 said, Look, Steve, take a look at this. I
13 said, Oh, I guess I was wrong.

14 Q. When you were shown by Mr. Meier the
15 correspondence of Phil Beauchesne and letter
16 from Phil Beauchesne, that verified that, in
17 fact, you were aware of Olisa Graham and you
18 were aware that she supported Shawn Drumgold's
19 alibi?

20 MS. SCAPICCHIO: Objection.

21 A. Obviously I was aware of Olisa Graham. If
22 Mr. Beauchesne sent me a tape, I listened to
23 the tape. At some point I was aware of Olisa
24 Graham. I don't remember what she said.

00149

1 That's why I said when you said the part about
2 it supported Drumgold's alibi I don't remember
3 the substance.

4 Q. Prior to the trial you were in possession of
5 Olisa Graham's transcribed statement and tape
6 of that statement?

7 A. I believe so.

8 Q. As supported by correspondence from you to
9 Phil Beauchesne and from Phil Beauchesne to
10 you?

11 A. Yeah. As we sit here today, I agree with the
12 statement that I had that information.

13 Q. As you sit here today, you agree that any
14 statement that was provided to you you read and
15 listened to the tape?

16 A. Correct.

17 Q. If the substance of that statement supported
18 Shawn Drumgold's alibi at the time of the
19 trial, you acknowledge that you had that
20 information relative --

21 MS. SCAPICCHIO: Objection.

22 Q. -- to Olisa Graham supporting the alibi of
23 Shawn Drumgold?

24 MS. SCAPICCHIO: Objection.

00150

1 A. Yeah. A flows to B flows to C, but getting
2 back into whether or not at that point --
3 whether or not at trial I would present it, if
4 Olisa Graham was associated with Terrance
5 Taylor that would have been -- I imagine that
6 would have been a reason why I would not have
7 presented it.

8 Q. In fact, if she was a resident or associated
9 with 23 Sonoma Street, you would not have
10 called her?

11 MS. SCAPICCHIO: Objection.

12 A. Probably correct, but, again, after Terrance
13 Taylor took the action that he took.

14 Q. During the course of the trial, all counsel at
15 the request of Alberti were coordinating the
16 trial witnesses and subpoenas and summonses?

17 MS. SCAPICCHIO: Objection.

18 A. As I've stated before, we tried to work
19 together.

20 Q. In fact, any trial subpoenas that were issued
21 were on some occasions joint subpoenas for
22 witnesses because you shared a common witness?

23 MS. SCAPICCHIO: Objection.

24 A. I think that occurred on some of the witnesses.

00151

1 Q. Did the Commonwealth call any rebuttal --

2 A. I don't remember.

3 Q. -- witnesses?

4 A. I don't remember. They may have.

5 Q. Do you recall whether or not you rested on the

6 last day, October 11th, or on the morning when

7 you did your closing arguments on the 12th?

8 A. My memory -- my best memory is that the case

9 closed and we argued the following day because,

10 as I recall, there would have been a charge

11 conference, a number of things that would have

12 occurred before closing arguments.

13 Q. Do you recall whether or not Alberti held the

14 charge conference before any of the evidence

15 rested as some judges will do during the course

16 of the trial when there's a break in witnesses?

17 A. My best memory is that did not happen, that it

18 was at the end of the case, but again --

19 Q. There was no record of the charge conference,

20 correct?

21 A. I don't know.

22 Q. Was it done in chambers without a stenographer?

23 A. I thought it was done in open court. But if it

24 was done in chambers -- Judge Alberti did have

00152

1 Mr. Drumgold in chambers I know during
2 post-trial proceedings. I don't know
3 whether -- I would hope that Mr. Drumgold would
4 have been there.

5 Q. Do you have any memory of any time during the
6 course of the trial indicating to the Court or
7 to Mr. Beauchesne would you issue a summons to
8 appear to any particular civilian witness?

9 A. I don't remember specifically.

10 (Exhibit No. 60, Subpoena, marked for
11 Identification.)

12 Q. Showing you what's been marked as Exhibit 60.

13 A. (Perusing document) I don't remember ever
14 seeing this before. I don't know when it was
15 issued. I don't know who it was -- I don't
16 know at whose request it was issued. Maybe it
17 was mine, but I don't know.

18 Q. For the record, Exhibit No. 60 is a copy of a
19 summons or subpoena that was issued to Lisa
20 Graham to appear for Wednesday, October 11th,
21 in the matter of Commonwealth v. Shawn
22 Drumgold. Do you acknowledge that's what this
23 document is?

24 A. That's what it purports to be.

00153

1 Q. In fact, this was a document that was provided
2 in the course of discovery from the Suffolk
3 County District Attorney's office that's Bate
4 stamped 3002. Do you acknowledge that someone
5 involved in the trial of Commonwealth v. Shawn
6 Drumgold wished to call Lisa Graham and, in
7 fact, issued this summons?

8 A. I have no memory of the issuance of that
9 summons. I look at it and it says, Call
10 Mr. Beauchesne. But I just don't know.

11 Q. Again, relative to Lisa Graham and her
12 residence at 23 Sonoma Street, did you make a
13 conscious decision to avoid calling those alibi
14 witnesses based on strategy?

15 MS. SCAPICCHIO: Objection.

16 A. I don't have a distinct memory as to what my
17 thought process was with regard to Lisa Graham.
18 However, as I said before, considering the fact
19 that the people at 23 Sonoma Street were closer
20 to Taylor than they were to Drumgold once
21 Taylor asserted his Fifth Amendment privilege I
22 would have been very wary about calling anyone
23 from 23 Sonoma Street.

24 (Exhibit No. 61, Portion of Testimony,

00154

1 marked for Identification.)

2 Q. Showing you what's been marked as Exhibit 61, a
3 copy of a portion of your testimony from the
4 motion for new trial on March 31st, 1994, I'm
5 just going to ask that you read these pages and
6 then I'm going to have a few questions.

7 A. (Perusing document.)

8 Q. Based on your review of your motion for new
9 trial testimony, what was your reasoning in
10 calling Shawn Drumgold to the stand in his
11 defense?

12 A. Well --

13 MS. SCAPICCHIO: Objection.

14 A. I think as I indicated before in, whenever that
15 was, '92, '93, '94, initially Shawn wasn't
16 going to take the stand. He did have a prior
17 record. We did have a sense that that prior
18 record was going to come out if he testified.
19 Certainly once Taylor was directed out, being
20 aware of Taylor's statement it was a way to get
21 Drumgold's story as to where he was before the
22 jury without putting Drumgold on the stand.
23 Now Taylor claims the Fifth, and I can't
24 remember the exact thought process, but we must

00155

1 have felt it was significant to place
2 Mr. Drumgold elsewhere at the time of the
3 shooting. I have to tell you honestly I don't
4 know what my strategy was at that time.

5 Q. Were you able to elicit the alibi from Paul
6 Durand?

7 A. I don't remember Mr. Durand's testimony.

8 Q. Your memory today is you made a conscious
9 decision to avoid 23 Sonoma Street?

10 MS. SCAPICCHIO: Objection.

11 A. My testimony today is that that makes sense,
12 that once Taylor claimed his privilege I would
13 have not -- I would have been very wary about
14 any of these potential witnesses from 23 Sonoma
15 Street. I think they would have been more
16 concerned about Taylor than Drumgold.

17 Q. In your previous testimony of the motion for
18 new trial, you indicated that you lived this
19 case for 13 months, is that correct?

20 A. It's fair.

21 Q. Relative to the amount of time on a weekly
22 basis you put in, it took up the majority of
23 your practice?

24 A. I don't know if -- it certainly took up more

VOLUME II
PAGES 160-339
EXHIBITS 171-184

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 04-11193NG

SHAWN DRUMGOLD,
Plaintiff

vs.

TIMOTHY CALLAHAN,
FRANCIS M. ROACHE,
PAUL MURPHY, RICHARD WALSH,
AND THE CITY OF BOSTON,
Defendants

CONTINUED DEPOSITION OF STEVEN

RAPPAPORT, a witness called by counsel for the
Defendant, Richard Walsh, taken pursuant to the
applicable provisions of the Federal Rules of
Civil Procedure, before Joann Denning, a
Shorthand Reporter and Notary Public in and for
the Commonwealth of Massachusetts, at the
offices of Bonner Kiernan Trebach & Crociata,
One Liberty Square, Boston, Massachusetts,
on Saturday, February 3, 2007, commencing
at 10:17 a.m.

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| <p>272</p> <p>1 just tell him everything that I asked. I</p> <p>2 forget his name. There was one ME in Suffolk</p> <p>3 County that used to like to ride around with</p> <p>4 the cops.</p> <p>5 Q. In your experience Stanley Bogdan would talk to</p> <p>6 both sides?</p> <p>7 A. Yes. I told you there was only one ME that I</p> <p>8 had a problem with.</p> <p>9 Q. He'd answer your questions if you had any?</p> <p>10 A. If I had them.</p> <p>11 Q. Do you have any memory of a conversation with</p> <p>12 Stanley Bogdan?</p> <p>13 A. No, I don't.</p> <p>14 Q. Is it your memory today that you took notes</p> <p>15 throughout the investigation and the trial?</p> <p>16 A. I definitely took notes during the trial when I</p> <p>17 wasn't questioning. I tend to take copious</p> <p>18 trial notes. I'm sure I wrote things down.</p> <p>19 Q. Did you take notes at any time during the</p> <p>20 course of your interview of Shawn Drumgold?</p> <p>21 A. I'm sure I did, certainly in the initial stages</p> <p>22 of our interview, of our relationship.</p> <p>23 Q. Would there be any times that you would ask a</p> <p>24 Court to conduct a voir dire of a witness due</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> | <p>275</p> <p>1 Mary Alexander had stated that she had seen the</p> <p>2 assailants. She was presented with a photo</p> <p>3 array. And my understanding is, my memory is,</p> <p>4 that she did not pick Shawn Drumgold's photo</p> <p>5 out of an array. My memory is also that I saw</p> <p>6 the array, and I had no problem picking out</p> <p>7 Shawn Drumgold.</p> <p>8 Q. Based on those facts did you consider Mary</p> <p>9 Alexander's testimony to be inculpatory or</p> <p>10 exculpatory regarding Shawn Drumgold?</p> <p>11 A. Without -- but I knew it was coming. The</p> <p>12 bottom line is I knew when Mary Alexander</p> <p>13 walked into that courtroom she was going to</p> <p>14 pick Shawn Drumgold out.</p> <p>15 Q. I understand that, but I'm saying prior to you</p> <p>16 showing the photo --</p> <p>17 A. I thought she was an exculpatory witness.</p> <p>18 There would have been no reason for me to have</p> <p>19 her examined at that point.</p> <p>20 Q. After you showed her the photograph and after</p> <p>21 it was disclosed to you that she identified</p> <p>22 Shawn Drumgold while there was a view, how did</p> <p>23 you consider her testimony, inculpatory or</p> <p>24 exculpatory?</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> |
| <p>273</p> <p>1 to a health concern?</p> <p>2 A. I think I probably have.</p> <p>3 Q. Under what circumstances would you then have</p> <p>4 the Court conduct a voir dire relative to the</p> <p>5 witness' ability to perceive, remember, and</p> <p>6 describe?</p> <p>7 A. For some reason I recall a case -- it was a</p> <p>8 Suffolk County case back in the '80s when you</p> <p>9 could still file a motion based upon certain</p> <p>10 mental health issues that would arise and you</p> <p>11 could actually get someone examined for</p> <p>12 competency prior to trial. You could get a</p> <p>13 complainant in a rape case sometimes examined</p> <p>14 depending upon the judge.</p> <p>15 Q. Is that again a strategy issue, whether you do</p> <p>16 it or don't?</p> <p>17 A. It would be a strategy issue. They don't allow</p> <p>18 it anymore. I don't think you --</p> <p>19 Q. There's got to be a foundation for it?</p> <p>20 A. It's very difficult to get a complaining</p> <p>21 witness examined for competency merely because</p> <p>22 they have a mental health history, whereas 30</p> <p>23 years ago you could.</p> <p>24 Q. If a health --</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> | <p>276</p> <p>1 A. As I was stating about daggers before, I was</p> <p>2 just waiting for the dagger to go in and</p> <p>3 wondering whether -- not whether, but how much</p> <p>4 it would be twisted.</p> <p>5 Q. So it's fair to say that your answer is that</p> <p>6 after the identification of Shawn Drumgold when</p> <p>7 you showed Mary Alexander the photo and her</p> <p>8 identification of him at the view that her</p> <p>9 testimony then was inculpatory?</p> <p>10 A. Correct.</p> <p>11 Q. Did you then take steps to attempt to minimize</p> <p>12 the inculpatory nature of her testimony?</p> <p>13 A. I don't recall.</p> <p>14 Q. It's fair to say you knew about -- let's back</p> <p>15 up a little. After she identified Shawn when</p> <p>16 you showed her a picture of Shawn, that alone,</p> <p>17 did you consider that alone that her testimony</p> <p>18 would be inculpatory or exculpatory?</p> <p>19 A. Inculpatory.</p> <p>20 Q. It was clearly a trial strategy and tactic in</p> <p>21 regards to showing her that photograph one on</p> <p>22 one?</p> <p>23 A. It was -- I'll call it a stupid, careless</p> <p>24 mistake on my part. There was no need to show</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> |
| <p>274</p> <p>1 A. It's been that long.</p> <p>2 Q. If a health issue goes to a witness' ability, a</p> <p>3 percipient witness' ability to perceive, to</p> <p>4 remember, to describe --</p> <p>5 A. Excuse me. Yesterday was the 30th anniversary</p> <p>6 of me starting my practice, my first practice,</p> <p>7 out of law school.</p> <p>8 Q. If a witness' health issue goes directly to a</p> <p>9 percipient witness' ability to remember,</p> <p>10 ability to describe, or ability to perceive,</p> <p>11 would you conduct a voir dire of that witness?</p> <p>12 A. And the witness is going to be offering</p> <p>13 inculpatory testimony against my client?</p> <p>14 Q. Yes.</p> <p>15 A. I would try to get such a hearing, most often.</p> <p>16 I'd say the general response would be yes.</p> <p>17 Q. How did you characterize Mary Alexander's</p> <p>18 testimony prior to the identification</p> <p>19 procedure?</p> <p>20 A. I don't remember.</p> <p>21 Q. Prior to the identification procedure Mary</p> <p>22 Alexander did not identify Shawn Drumgold in a</p> <p>23 photo array, is that correct?</p> <p>24 A. In the initial stages of the investigation,</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> | <p>277</p> <p>1 her the photo. I had to put an extra nail in</p> <p>2 the coffin, and it ended up being a coffin in</p> <p>3 my view.</p> <p>4 Q. Therefore, when this was disclosed in the lobby</p> <p>5 conference that's when you felt, for lack of a</p> <p>6 better term, the pressure of the knife going</p> <p>7 in?</p> <p>8 A. I actually felt the -- when she testified in</p> <p>9 court is when I felt the knife go in, but I</p> <p>10 knew the knife was coming for a while.</p> <p>11 Q. What did you do to take steps to eliminate or</p> <p>12 soften the damage of her testimony?</p> <p>13 A. I was just trying to figure out how to</p> <p>14 accomplish what you just said, soften the blow.</p> <p>15 I don't know that I ever came up with a way to</p> <p>16 soften the blow because it was a bone-head</p> <p>17 error on my part that I don't think I ever</p> <p>18 figured out a way to calculate.</p> <p>19 Q. Did you disclose prior to Mary Alexander's</p> <p>20 testimony her identification of Shawn to Shawn?</p> <p>21 Did you disclose to your client?</p> <p>22 A. I believe so.</p> <p>23 Q. After the last --</p> <p>24 A. Actually I believe that Mrs. Drumgold was</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> |

278

1 there.
 2 Q. When you disclosed it?
 3 A. No, no, when it happened. As I recall,
 4 Mrs. Drumgold was my guide in the neighborhood
 5 that night. It really wasn't like the safest
 6 place for a guy like me to be out there alone.
 7 In fact, I remember Beauchesne reading me the
 8 riot act the next day because he had to send
 9 cops out there or something to protect me
 10 because there was some white dude walking
 11 around the neighborhood. I felt perfectly safe
 12 because I had Mrs. Drumgold with me. She was
 13 my guide.
 14 Q. How many days did the trial last from the
 15 view --
 16 A. I don't remember. How many days did the trial
 17 last? I always thought it was much longer than
 18 it was.
 19 Q. -- from the view until Mary Alexander
 20 testified?
 21 A. I don't know. I keep hearing you talk about
 22 Day 7, Day 8, Day 9 and the charge being on Day
 23 10. I remember --
 24 Q. 11.
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279

1 A. Or 11. I remembered the case -- maybe it was
 2 because it was a locked-up jury, but it just
 3 seemed like the case was a -- I recently
 4 completed a three-and-a-half week murder case.
 5 This one seemed at least as long.
 6 Q. Needless to say, from the time that you showed
 7 Mary Alexander the photograph until the time
 8 she testified there was a few days?
 9 A. Yeah. I think I stewed for a while.
 10 Q. It's fair to say that the day it occurred
 11 Ms. Drumgold knew that Mary Alexander
 12 identified Shawn?
 13 A. My best memory is that Mrs. Drumgold was with
 14 me when I spoke to Mary Alexander out in the
 15 field. I'm not positive that she actually went
 16 up the stairs with me. I know she was with me
 17 that evening.
 18 Q. From the time Mary Alexander identified Shawn
 19 in the photograph until the disclosure in the
 20 lobby conference that the government knew about
 21 it, did you take steps to reopen any plea
 22 negotiations with Phil Beauchesne?
 23 A. No.
 24 Q. Did you consult with Shawn Drumgold regarding
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280

1 the ramifications of Mary Alexander's
 2 identification and whether or not he should
 3 reconsider the plea negotiations?
 4 A. I don't recall, but frankly I would tend to
 5 think that the answer is no. I don't recall,
 6 but I really have no memory of any discussions
 7 regarding plea negotiations once the trial
 8 started.
 9 (There was a discussion off the record.)
 10 Q. After Mary Alexander testified, did you discuss
 11 with Shawn Drumgold the impact of her
 12 testimony?
 13 A. I have no specific memory of doing that.
 14 However, I felt that Shawn and I spent a lot of
 15 time talking before, during, and after this
 16 case. So I don't have a specific memory of
 17 saying we just got murdered, but I shared with
 18 him my thoughts on how the case was going as
 19 the case came in.
 20 Q. You previously -- tell me if I'm wrong. You
 21 referred to the identification by Mary
 22 Alexander of Shawn Drumgold was like putting
 23 the final nail in the coffin.
 24 A. I said I felt like I had to put a final nail in
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281

1 the coffin. I mean, she was, as far as I was
 2 concerned, an exculpatory witness. I thought
 3 things were going to go well and it was my
 4 putting the final nail in the coffin that I
 5 overdid it. I didn't have to put that final
 6 nail in the coffin. So I wasn't discussing her
 7 being the final nail in the coffin of the case.
 8 I was talking about my questioning of her being
 9 the final nail in the coffin of losing her as
 10 an exculpatory witness and turning her into an
 11 inculpatory witness. I still felt when the
 12 jury got the case that the evidence did not
 13 support a conviction.
 14 Q. How did you feel about your cross-examination
 15 of Mary Alexander or the recross-examination?
 16 A. I don't remember it. My sense is I wasn't
 17 happy with it, but I don't remember.
 18 Q. If you knew she was dying, would you have done
 19 anything differently than you did?
 20 A. I think I've already said if I knew she was
 21 dying I would have made an effort to secure
 22 medical records, make a determination as to
 23 whether or not the cause of her dying had any
 24 impact upon her as a witness.
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282

1 Q. When you first met Mary Alexander, how long did
 2 that process take place -- strike the question.
 3 When is the first time you met Mary
 4 Alexander?
 5 A. That night.
 6 Q. That's the night of the identification
 7 procedure you performed with her?
 8 A. Hm-hm. Yes.
 9 Q. How long did you speak to her before you showed
 10 her the photo?
 11 A. Less than five minutes.
 12 Q. After you showed her the photo, did you
 13 continue to speak with her for a period of
 14 time?
 15 A. I don't recall. I would have been courteous.
 16 I didn't like what she had to say, but it
 17 didn't mean I didn't like her. I would have
 18 been courteous before. I would have been
 19 courteous after.
 20 Q. She had no problem speaking to you?
 21 A. No, I don't think so.
 22 Q. During that evening, did you make any
 23 observations of her that concerned you relative
 24 to her health or anything else?
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283

1 A. No, not that night.
 2 Q. During the course of your interview of her, did
 3 you see anything that raised any level of
 4 concern about her ability to perceive, ability
 5 to remember, and her ability to describe?
 6 A. I did not, but, as I say, I don't think I was
 7 with Mary Alexander for more than five minutes
 8 total, and that would be the outside allotted
 9 time.
 10 Q. During that five-minute period --
 11 A. Up to five minutes.
 12 Q. -- did you make any observations of her that
 13 you had some level of concern about her mental
 14 capacity or her health?
 15 A. No.
 16 Q. What time of day was this interview?
 17 A. It was after court. My memory is that it was
 18 either -- it may have started -- my day in the
 19 field may have started at dusk, but I seem to
 20 remember being out there that night as well.
 21 Then I seem to remember Beauchesne actually
 22 complaining about having to send cops out last
 23 night because some white guy was walking around
 24 the streets.
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| <p>284</p> <p>1 Q. Was there any lighting problems where you were 2 conducting this identification? 3 A. No. I was inside her -- it was their house. 4 Q. She invited you inside the house? 5 A. It may have been at the door. I don't recall 6 actually going into her apartment. 7 Q. Physically how close were you to her? 8 A. Closer than you and I are now. 9 Q. We're a conference table away in feet. 10 A. I was able to hand her a photo, close enough to 11 hand her something, within 2 feet. 12 Q. Where was your focus of attention when you were 13 talking to her? 14 A. I don't know. I don't remember. 15 Q. Were you looking in her eyes so you could 16 measure her up? 17 A. I don't remember. 18 Q. Fair to say you weren't looking away from her? 19 A. I don't remember. I may have been looking 20 around the apartment. It was a curious night 21 for me. 22 Q. When you showed her the photo, were you looking 23 at her for her reaction? 24 A. I don't remember. (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> | <p>287</p> <p>1 regards to her ability to perceive, remember, 2 or describe? 3 A. No. The only thing that struck me as odd was 4 when she identified me as a police officer. 5 Q. And that's based on what you know now? 6 A. No, no, no. It struck me odd at the time. But 7 I must say there was a period of time when 8 people confused me with a police officer quite 9 often. I was a younger lawyer. I'd go to 10 court without a suit on, neat but I'd show up 11 and I'd be talking to a client, and I once had 12 a judge say, Step away from that defendant. 13 Why are you talking to him when he has an 14 attorney? Magistrate Cohen got very upset once 15 because I was talking to a kid from Southie 16 actually. Excuse me? Oh, Mr. Rappaport, I'm 17 sorry. 18 It struck me as odd at trial when she 19 identified me as a police officer. My memory 20 is that she pointed to Shawn and she said, The 21 young boy standing -- or sitting next to the 22 police officer. That's just a memory I have. 23 Maybe it didn't -- you guys probably reviewed 24 the transcript that she thought I was a cop (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> |
| <p>285</p> <p>1 Q. Do you recall making any observations of her 2 physical appearance or facial characteristics? 3 A. I really have a hard time remembering what she 4 looked like. 5 Q. Do you recall seeing any scars? 6 A. I have a hard time remembering even what she 7 looked like. I have no memory of any 8 distinctive physical markings. 9 Q. If you saw any large scar on her head 10 indicative of brain surgery, would you have 11 inquired of the scar? 12 A. Gee, I don't know. I don't know because that 13 could be something, especially some women could 14 be very self-conscious about, scarring to their 15 faces. It might not be a topic of discussion 16 that they welcome. At this point I'm looking 17 to make as many allies in the neighborhood as I 18 can. 19 Q. If a witness was dying and you observed a large 20 scar on her cranial aspect of the head -- 21 A. And I knew the witness was dying at the time? 22 Q. Yes. Would you have inquired? 23 A. I might inquire as to whether or not it was a 24 recent scar. (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> | <p>288</p> <p>1 when a short time earlier I had introduced 2 myself as the attorney working for Shawn 3 Drumgold, the boy who was accused of the crime. 4 Q. When you were doing the identification 5 procedure? 6 A. There's no question that I would have 7 introduced myself as the lawyer for the 8 accused. 9 Q. If you knew that a witness was dying and the 10 same circumstances happened that they then 11 confused you with a police officer, what would 12 you have done in those circumstances? 13 A. The mere fact of her dying -- look, it could be 14 pancreatic cancer for all I knew. But if I 15 knew that she had an illness of her brain and 16 within a week or so or a few days or a week or 17 ten days, whatever, of the time when I had 18 spoken to her and introduced myself I would 19 think that she wasn't a very worldly woman, I 20 wonder how many white people have come to her 21 house over the past couple of weeks, and I 22 would say how come she can't remember that I'm 23 a defense lawyer and she thinks I'm a cop? It 24 would have caused a further red flag. There (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> |
| <p>286</p> <p>1 Q. And the cause of the scar? 2 A. Yeah. 3 Q. Clearly out of concern of whether they had the 4 ability to perceive, remember, describe? 5 A. I don't know if I look at somebody's face and 6 see a scar I think that's going to impact their 7 ability to remember something and adequately 8 describe it, but if I knew the person was ill 9 and had something wrong with their brain and I 10 saw the scars, a scar, under those 11 circumstances I would wonder what was going on 12 and I probably would have followed up on it 13 with questions. 14 Q. Did you speak with Mary Alexander at the 15 courthouse prior to her testifying? 16 A. I don't think so. 17 Q. Did you observe her at the courthouse in and 18 about the courtroom before she testified? 19 A. I never saw her come into -- my memory is 20 seeing her come into the courtroom. 21 Q. Not now based on what you read in the paper or 22 anywhere else, but at the time that Mary 23 Alexander testified did you make any 24 observations that rose your level of concern in (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> | <p>289</p> <p>1 already was a red flag when she identified me 2 as I recall as a police officer. That was the 3 only red flag. It just seemed odd. 4 Q. That would have caused you a further red flag? 5 A. If I knew that she had a brain disorder, yes. 6 Q. And if you knew she was dying? 7 A. I don't think it's the dying as much as it's 8 the brain disorder. Like I say, you could be 9 dying of congestive heart failure. I don't 10 think that's necessarily going to affect your 11 ability to perceive something. 12 Q. As a seasoned criminal defense attorney, if you 13 knew a witness was dying you'd want to know 14 why? 15 A. As I say, if I knew -- 16 MR. REILLY: Objection. This is the 15th 17 time this question has been asked. And this is 18 40 minutes after you had five or ten minutes 19 left. You've plowed this ground at least 15 20 times, and you should move on. 21 A. Once again, if I knew that she had a brain 22 problem, I would have endeavored to determine 23 what the problem was and what the effect of 24 that problem was on her ability to testify (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> |

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| <p>1 accurately about any situation she'd be called 2 to testify to. 3 Q. Did you know she was dying at the time of 4 trial? 5 A. No. 6 MR. CURRAN: Can I have this marked, Mary 7 Alexander's testimony at 195 through 199. 8 MR. ROACHE: Day 5. 9 (Exhibit No. 184, Excerpt of Transcript 10 from Trial Day 5, marked for Identification.) 11 Q. Have you had a chance to review Exhibit 12 No. 184? 13 A. Hm-hm. 14 Q. Particularly you had started cross-examining 15 Mary Alexander on the issue of whether or not 16 she -- pretrial publicity and the photograph of 17 Shawn Drumgold being in the paper, is that 18 correct? 19 A. That seems to be. 20 Q. In fact, you cross-examined her -- 21 "QUESTION: When you spoke to them, did 22 you tell them that you had seen a photograph of 23 the person that had done it either on TV or in 24 the newspaper? (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> | <p>1 there is that she had been ill in the past, in 2 February. 3 Q. You knew she had an operation in February? 4 A. Let me say this. As I review that, it's 5 obvious that I knew she had had an operation in 6 February. What the operation was for, I don't 7 have any memory of it. As I sat here until 8 two minutes ago, I had no memory of even 9 knowing that she had been ill at any time. But 10 I've just read what you put in front of me, and 11 that does not say she was dying. 12 Q. Doesn't say, I don't care if I'm dying? 13 A. No, no. It says -- the way I read that is, I 14 told the police, I don't care if I'm dying. 15 I'm still going to come in and say what I saw. 16 To me I never got any impression from 17 reading that or at the time that she was saying 18 that she was dying. She had been ill in the 19 past, and, frankly, her illness is discussed as 20 past tense in that testimony. 21 Q. How did you know and get the information that 22 she had an operation? 23 A. She may have told me. 24 Q. Did you ask her what type of operation? (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> |
| <p>1 "ANSWER: No one asked me if I seen the 2 picture in TV or in the paper. You know, they 3 come by and see how you're doing, and knowing 4 me I'd just always tell them, you know. 5 "QUESTION: Okay, people come by, and 6 actually there was a period of time last year 7 when you were ill? 8 "ANSWER: Excuse me? 9 "QUESTION: There was a period of time 10 last year when you were ill? 11 "ANSWER: Yes. 12 "QUESTION: You had an operation in 13 February, right? 14 "ANSWER: Yes. 15 "QUESTION: And you weren't feeling too 16 well at that time? 17 "ANSWER: Yes. 18 "QUESTION: And the police would come by 19 and they'd say the detective would come by to 20 see how you were doing? 21 "ANSWER: Yes. And I told them, I don't 22 care if I'm dying. I'll still go and tell them 23 what I saw. 24 "QUESTION: And during that period of (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> | <p>1 A. I don't know that I did. I don't even 2 remember. 3 Q. Do you think it was a significant thing to ask 4 if a witness told you they were hospitalized 5 for a period of time and had an operation, to 6 inquire whether or not the type of operation? 7 A. You know, it does seem like it's something that 8 one would ask. I don't have a memory of asking 9 it. There could be reasons why I would not ask 10 a woman who I didn't know to explain to me the 11 specifics of some surgery she may have had. 12 Q. Why wouldn't you have asked? 13 A. I may want to keep this witness as a very 14 favorable witness to my cause, and certain 15 questions can be very embarrassing. 16 Q. Did you make a strategic decision not to ask 17 Mary Alexander what the operation was for? 18 A. Don't know. 19 Q. Do you have a memory of inquiring? 20 A. No memory. 21 Q. When you had an opportunity to interview a 22 friendly witness, Tracie Peaks, did you inquire 23 of Tracie Peaks relative to what Mary 24 Alexander's health was? (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> |
| <p>1 time, though, did you tell them you had seen 2 anyone's photograph either in the newspaper or 3 on the TV? 4 "ANSWER: While I was sick? 5 "QUESTION: Well, any time that the 6 officers came by to see you to see how you were 7 doing. 8 "ANSWER: Yeah. I mean, like I just told 9 you, go over the same thing over and over 10 again." 11 Did I read that accurately? 12 A. I wasn't following as you read it, but I have 13 no reason to think you didn't. 14 Q. In fact, you knew that Mary Alexander was 15 dying? 16 MR. REILLY: Objection. 17 A. No, I didn't. That's not what that says. 18 MR. REILLY: That's absolutely not what 19 that says. 20 A. I did not know she was dying. She said 21 something to the effect, I don't care if I was 22 dying. I would come in and still tell them 23 what I knew. In fact, the indication there is 24 that she wasn't dying, frankly. The indication (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> | <p>1 A. For all I know, it was Tracie Peaks who told me 2 that Mary Alexander had had an operation. 3 Q. Do you have any notes in regards to where you 4 obtained this information from? 5 A. No. 6 Q. Did you take any steps to determine where this 7 operation took place? 8 A. Not that I recall. 9 Q. Did you have an opportunity to -- did you at 10 any time ever ask anyone from the Commonwealth, 11 from the DA's office, or the police department 12 whether or not -- what the operation was for? 13 A. I don't remember whether I asked or not, but 14 based upon the little knowledge I had I would 15 not have thought that there was a -- I'm 16 positive that I didn't make the connection 17 that it was a brain illness. 18 Q. Did you ever speak to Lola Alexander at any 19 time prior to the conviction of Shawn 20 Drumgold? 21 A. Is that the mother? 22 Q. Yes. 23 A. I have no memory of it. 24 Q. Did you speak with Betty Peaks, Tracie Peaks' (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p> |